

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

PREM NATH,

Debtors.

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Case No. 05-25603

Chapter 7

**NOTICE OF PRESENTMENT
OF ORDER FOR RELIEF FROM
THE AUTOMATIC STAY**

PLEASE TAKE NOTICE that on the annexed Affidavit of JOHN CODY sworn to on 21ST day of December 2005, and the exhibits annexed thereto, SELECT PORTFOLIO SERVICING F/K/A FAIRBANKS CAPITAL CORP. ("SELECT") as servicing agent for LONG BEACH MORTGAGE COMPANY ("LBM"), a secured creditor, will submit the annexed Order for Relief from the Automatic Stay, pursuant to Section 362 (d)(1) of the Bankruptcy Code, modifying the automatic stay so that LBM, as secured creditor, can foreclose the mortgage it holds on the premises known as 12 John Calvin Street, Blauvelt, New York for cause, including debtor's failure to make post petition payments, before the Hon. Adlai S. Hardin, United States Bankruptcy Judge, on the day of 19th day of January, 2006 at 9:45 am o'clock in the forenoon of that day, at the courthouse located at 300 Quarropas Street, White Plains, New York 10601.

PLEASE TAKE FURTHER NOTICE, that if written objection is received by the undersigned and the Court, at least five (5) days before the date on which the Order is to be submitted, then there will be a hearing thereon on 25th day of January 2006 at 9:45 am, or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE, that in the absence of any written objection, the Court may sign the order without any further hearing or notice.

Chapter 7

Debtor.

STATE OF MINNESOTA)
) ss:
COUNTY OF DAKOTA)
)

1. I am a duly Appointed Officer with SELECT PORTFOLIO SERVICING F/K/A FAIRBANKS CAPITAL CORP. ("SELECT"), servicing agent for LONG BEACH MORTGAGE COMPANY ("LBM"), a secured creditor, and am fully familiar with the facts and circumstances hereinafter set forth. I submit this affidavit in support of SELECT's notice of motion for an order pursuant to §362(d)(1) & (2) of the Bankruptcy Code modifying the automatic stay so that LBM, as secured creditor, can recover possession of the premises known as 12 John Calvin Street, Blauvelt, New York ("Property"), for cause; and for such other and further relief as this Court deems just and proper. A copy of the proposed order is annexed hereto as Exhibit "A".

3. As collateral security for the payment of the aforesaid indebtedness, DEBTOR, on the same day, duly executed, acknowledged and delivered to LBM her mortgage in the sum of \$500,000.00. The mortgage was duly recorded in the Office of the Clerk of the Rockland (the “Mortgage”), whereby DEBTOR mortgaged to LBM, its successors and assigns forever, the Property. Any applicable mortgage

tax was duly paid simultaneously with said recordation. A copy of the mortgage and note are annexed hereto as Exhibit "B".

4. DEBTOR has failed, neglected and refused to comply with the provisions of the Note and Mortgage by failing to make and pay the installment of principal and interest due and owing, despite due demand therefor. Said default has continued for more than fifteen (15) days after the due date thereof.

5. By reason of the aforesaid, LBM has elected to declare the unpaid principal sum of the Note and Mortgage in the amount of \$492,260.67 with accrued interest at 10.99% per annum, to be immediately due and payable.

6. On October 16, 2005, a voluntary petition under Chapter 7 of the United States Bankruptcy Code was entered and filed by the Debtor.

7. On or about November 14, 2005, SELECT conducted a search of the comparable recent sales of homes similar to the Property in order to determine the fair market value thereof. As a result, a Broker Price Opinion was generated which estimated the fair market value of the premises at \$675,000.00 A copy of the Broker Price Opinion is annexed hereto as Exhibit "C".

8. Considering the foregoing, the total secured indebtedness on the Property is in excess of \$ with interest thereon. In addition, due to the fact that the fair market value on the property is estimated at \$812,229.67, there is no equity in the Property.

9. SELECT hereby requests relief from the automatic stay pursuant to 11 U.S.C. 362 (D) (1) & (2) to foreclosure the mortgage it services for LBM on the Debtor's Property, for cause, and as a result of the lack of equity in the Property.

10. **WHEREFORE**, SELECT respectfully requests that the relief herein requested by granted in all respects.

/S/ John Cody
JOHN CODY

Sworn to before me this
21st day of December 2005

/s/
Notary Public
Carmela D. Lagarlie
Notary Public, Minnesota
My Commission
Expires Jan. 31, 2008

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In Re:

PREM NATH,

Debtors.

-----X

Case No. 05- 25603

Chapter 7

**ORDER LIFTING THE
AUTOMATIC STAY**

Upon reading and filing the Notice of Motion dated December 28, 2005, the Affidavit of John Cody sworn to on December 21, 2005, and the exhibits annexed thereto on behalf of LONG BEACH MORTGAGE COMPANY, ("LBM") by Select Portfolio Servicing, its servicing agent, by its attorneys Henry P. Distefano, Esqs., for an Order pursuant of 11 U.S.C. §362(d) (1) & (2) granting relief from the automatic stay to foreclose the mortgage it holds on the property owned by the Debtor and located at 12 John Calvin Street, Blauvelt , New York (the "Property"); and there being no opposition thereto by the United States Trustee or Mark S. Tulis, Trustee, and there being no appearance by the Debtor, or their attorneys, and sufficient cause appearing therefore; it is

ORDERED, that automatic stay is hereby modified pursuant to 11 U.S.C. §362 (d) (1) & (2) to allow LBM to foreclose the mortgage it holds on the Property.

Dated: White Plains, New York
January , 2006

Justice Adlai S. Hardin

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
 COUNTY OF NASSAU)

JORDAN S. KATZ, being duly sworn, deposes and says:

That I am not a party to this action and maintain an office at 585 Stewart Avenue, Suite L-70, Garden City, New York 11530.

On December 29, 2005, I served a true copy of the **NOTICE OF PRESENTMENT** by regular mail, mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: **Prem Nath**
 12 John Calvin St
 Blauvelt, NY 10913
 Debtor

Mark S. Tulis , Trustee
 Oxman Tulis Kirkpatrick Whyatt & Geiger
 120 Bloomingdale Road
 White Plains, NY 10605

Shmuel Klein
 Debtor's Attorney
 Law Office of Shmuel Klein P.C.
 268 Route 59
 Spring Valley, NY 10977

United States Trustee
 33 Whitehall Street, 21st Floor,
 New York, NY 10004

 /s/ Jordan S. Katz
 Jordan S. Katz, Esq.,

Sworn to before me on
 December 29, 2005

 /s/
 NOTARY PUBLIC
 Nicolle Marie Krongel
 Notary Public, State of New York
 No. 01KR6060018
 Qualified in Suffolk County
 Commission expires on June 11, 2007